United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

In The

UNITED STATES COURT OF APPEALS
For The Second Circuit

No. 74-2428

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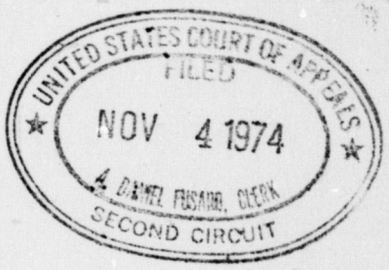
Mr
Served



ST. FRANCIS HOSPITAL,

Plaintiff-Appellee,

-against-

CONNECTICUT STATE BOARD OF LABOR RELATIONS and NATIONAL LABOR RELATIONS BOARD,

Defendants,

-and-

DISTRICT 1199 NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO,

Defendant-Appellant.

BRIEF ON BEHALF OF APPELLANT DISTRICT 1199 NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO

Appeal from the Order of the United States District Court for the District of Connecticut, No. H-74-344

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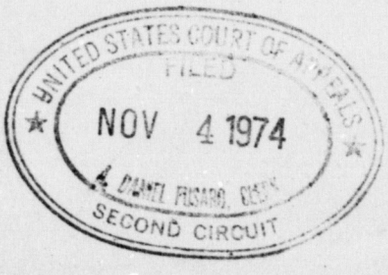

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STATEMENT OF QUESTIONS INVOLVED

1. Did the District Court abuse its discretion in issuing a preliminary injunction to a plaintiff who did not show that it will suffer irreparible harm and where the balance of the equities favors the defendant-appellant?

2. Did the court below abuse its discretion in issuing a preliminary injuction to a party having "unclean hands"?

3. Did the court below abuse its discretion in issuing a preliminary injunction where there was no likelihood that the Hospital would prevail on the merits.

4. Did the court below lack jurisdiction to issue a preliminary injunction under the Norris LaGuardia Act, 29 U.S.C.A. § 101 et. seq., the Anti-Injunction Act, 28 U.S.C.A. § 2283, and the Garmon Preemption doctrine to a party other than the N.L.R.B.?

STATEMENT OF CASE

Nature Of The Appeal

This is an appeal from an order dated November 1, 1974, issued by the United States District Court for the District of Connecticut, enjoining the Connecticut State Board of Labor Relations ("State Board") from conducting a representation election among certain employees of plaintiff-appellee St. Francis Hospital ("the Hospital") pursuant to a consent agreement between the Hospital and defendant-appellant District 1199 National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO ("District 1199"). This election was scheduled to take place on November 6, 1974.

The instant case arose from the Hospital's refusal to comply with the consent election agreement it entered into under the auspices of the State Board. Appellant, District 1199 is a labor organization which seeks to represent certain employees at St. Francis Hospital. Appellee Hospital is a private nonprofit voluntary hospital located in Hartford, Connecticut providing health care services and facilities and is the Employer herein.

Course of Proceeding and Disposition In The Court Below

The Complaint

On or about October 25, 1974, the Hospital filed a complaint in the United States District Court for the District of Connecticut pursuant to Title 28 U.S.C §§1332 and 1337 and Title 29 U.S.C. §151 seeking a preliminary injunction against the holding of the consent representation election by the State Board.

Paragraph 3 of the complaint identifies the parties.

Paragraphs 4 through 14 recite some of the facts of the dispute relating to the various proceedings before the State Board and a description of petitions filed by the Hospital with the National Labor Relations Board.

Paragraph 15 alleges that the Hospital will suffer irreparable damage if the State Board-ordered election is held and that there is no other remedy at law.

The complaint then requests that the Court preliminarily and permanently enjoin the Board from holding the election scheduled for November 6, 1974. The complaint further requests that the Court enjoin District 1199 from proceeding with its preparations for the election. It was also prayed that the Court request that the NLRB render a decision on whether it will

take jurisdiction as soon as practicable.

The District Court's Ruling and Order

On October 31, 1974, a hearing was held on the Hospital's petition for a preliminary injunction. On November 1, 1974, the District Court granted the preliminary injunction.

The Court ordered that the State Board be enjoined "from conducting any representational elections among employees at the St. Francis Hospital while the plaintiff's petition is pending before the NLRB." (App. "L" at p. 12)*

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* "App." refers to District 1199's Appendix and the letter following refers to the item therein.

STATEMENT OF FACTS

On July 25, 1974, District 1199 and St. Francis Hospital entered into a Consent Election Agreement under the auspices of the State Board pursuant to a petition for certification filed by District 1199 with the State Board. The consent election was scheduled for September 11, 1974 (App. A)

On September 4, 1974, the Hospital requested the State Board to dismiss the proceedings on the grounds of lack of jurisdiction. (App. B). The election was postponed pending decision on the Hospital's motion.

On October 9, 1974, the State Board ordered the election to proceed under the terms of the consent agreement. (App. C). The election date was set for November 6, 1974.

On October 25, 1974, the Hospital sought a preliminary injunction from the United States District Court, District of Connecticut (App. F). A hearing was held on October 31, 1974. The injunction was granted at 3:05 P.M. on Friday, November 1, 1974. (App. N, p. 12).

CHRONOLOGY

1. On June 17, 1974, District 1199 National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO (hereinafter "District 1199") demanded recognition as bargaining agent for the housekeeping, dietary and laundry employees of St. Francis Hospital (hereinafter "Hospital"). No answer was received.

2. On June 17, 1974, District 1199 filed three petitions for election with the Connecticut State Board of Labor Relations (hereinafter "State Board") requesting that elections be held for the employees in the housekeeping, laundry and dietary departments.

3. On July 12, 1974 both Houses of Congress passed an amendment to the National Labor Relations Act, granting hospital employees coverage under the Act.

4. On July 19, 1974, one week after Congress passed the NLRA amendment, the State Board held a conference of the parties. At the request of the attorney for the Hospital, the petitions were consolidated and a consent election was agreed to for one bargaining unit encompassing the three departments.

5. On July 25, 1974, after District 1199 showed sufficient "interest" under the rules of the State Board, the

consent agreement was signed by Sr. Francis Marie, Administrator of the Hospital and Jerome Brown, Vice President of District 1199. The election date agreed to was September 11, 1974.

6. On July 26, 1974, the President signed the NLRA amendment to be effective August 25, 1974.

7. On September 4, 1974, five weeks after the President signed the NLRA amendment and ten days after its effective date, the Hospital filed motion with the State Board to dismiss all proceedings. The election was postponed pending decision.

8. On September 12, 1974, a hearing was held before the State Board on the Motion to Dismiss.

9. On October 9, 1974, the State Board dismissed the Hospital's Motion and ordered the consent agreement to be honored. An election date of November 6, 1974, was set by the State Board.

10. The State Board proceeded to make arrangements for the election, preparing the ballots, posting notices to the employees and circulating the voter eligibility lists.

11. On October 25, 1974, sixteen days after the State Board dismissed the Hospital's motion, the Hospital sought a

preliminary injunction from the United States District Court, District of Connecticut, barring the State Board from holding the election on November 6, 1974, and from any further actions concerning District 1199's petitions.

12. On November 1, 1974, at 3:05 p.m., M. Joseph Blumnefeld, United States District Judge, District of Connecticut, issued a preliminary injunction against the State Board barring it from proceeding with the consent election on November 6, 1974.

I.

THE DISTRICT COURT ABUSED ITS DISCRETION IN ISSUING A PRELIMINARY INJUNCTION AS THE PLAINTIFF DID NOT SHOW THAT IT WILL SUFFER IRREPARABLE HARM AND AS THE BALANCE OF THE EQUITIES FAVORS HOLDING THE ELECTION.

A. Plaintiff Did Not Meet Its Burden of Demonstrating Irreparable Harm If an Election Is Held.

If this Court lets stand the injunction granted by the Court below, it will exacerbate the very harm the Court purported to alleviate. On the other hand, if the election is conducted, as requested by District 1199, the harm will be alleviated. The Court below found, as the Hospital had alleged, that "the campaign has created a high level of tension among all personnel, not only those affected by the upcoming election," (App. N at p. 11), and "as a result, the care of patients has suffered," id. Although District 1199 does not agree that such a situation exists, there can be no mistake that the enjoining of the election will serve only to increase any tension, confusion, bitterness, and resultant suffering of patient care which may exist. If the election is enjoined, the campaigning will continue and the employer will have to continue diverting its staff to electioneering. If a preliminary injunction issued by the District Court is not vacated by this Court, it will only serve to delay the date of the election. A petition is currently pending before the NLRB.

Even if the NLRB does not recognize the consent agreement, it will direct an election, nonetheless, in a unit deemed appropriate. The net result will be that whatever tensions, expenses, or suffering of patient care which may now exist from the Hospital's campaign to prevent unionization of its employees, will continue to exist if the election is not conducted. The injunction will have precisly the opposite of the result sought by the Court below. Only if an election is conducted can the campaign and the attendant tensions be alleviated. The very arguments the Hospital raises in support of the injunction give greater support to the non-issuance of such an injunction. How does the Hospital hope to eliminate its campaign expenses by continuing the campaign rather than by having the election. Whatever expenditures it has incurred resulting from the election have already been incurred. Certainly, if the election is held on Wednesday, November 6, 1974, the Hospital will have no further campaign expenses. Conducting the election will benefit all parties.

Should the Hospital fear a pre-mature certification by the State Board, District 1199 will stipulate and agree that no certification shall issue until thismatter is resolved, whether before the NLRB or the Court.

Furthermore, District 1199 poses as an alternative, in the event this Court feels that the publication of the elections results might be prejudicial, (which District 1199 can in no

way see) that this Court order that the election be conducted by the State Board and the ballots be impounded until the issue of the propriety of the election is resolved.

All arguments which the employer raises as to why the consent election agreement should not be honored can be fully raised and resolved after the election with no prejudice to either party.

When faced with an identical issue In the Matter of the Application of The Swedish Hospital in Brooklyn -and New York State Labor Relations Board and Local 1199, Drug and Hospital Union, AFL-CIO, Civ. No. 74-C-1267, Decision No. 624 (E.D.N.Y. September 4, 1974), (See decision attached), Judge Weinstein in setting aside a temporary restraining order stated:

> "...The interpretation of the statute is not clear and the NLRB could well interpret the statute as not applying to this case. Even if the NLRB does not take that position, it can, as it has in the past, recognize a well-conducted and fair State Board election in further proceedings before it. The Federal Board may well cede jurisdiction in these transitional matters, be it in a blanket or partial form by negotiating with the SLRB. The NLRB might conclude that it would be highly desirable for federal and state authorities to cooperate in holding hearings and in arranging for elections and other activities, so that the energies and time expended in holding and directing elections are not wasted. I take judicial notice that NLRB procedures take a substantial amount of time. If the election does not go forth at this time, it may be months or years before the NLRB holds an election...."

It should be noted with respect to Swedish Hospital, supra, that the Hospital therein subsequently filed a petition with the NLRB, 29th Region. The distinction on this basis attempted by the District Court in the instant case falls in light of this. If the election is held in the instant matter, as it was in Swedish Hospital, the two situations will be identical.

If District 1199 loses the election the question will be mooted. If District 1199 wins, as stated earlier, it will recognize and concede that further litigation will be necessary to resolve the certification question, whether before the Courts or the NLRB. What possible harm could result from conducting the election forthwith? The NLRB will have full authority to determine whether it will accept or reject the election results. No certification will issue until that time.

In addition, as stated should this Court feel that counting the ballots could in any way prejudice the Employer, this Court could order that they be impounded pending the resolution of these issues. Cf. Cab Operating Corp. v. City of New York, 243 F. Supp. 55 (S.D.N.Y. 1965), U.S. Pillow Corp. v. United Furniture Workers, 208 F. Supp. 337 (S.D.N.Y. 1962).

An injunction is an extraordinary and drastic remedy, and it should not be granted unless the movant shows a clear need for such relief. Checker Motors Corp. v. Chrysler Corp., 405

F. 2d 319 (CA 2 1969); Clairol Inc. v. Gillette Co., 389 F. 2d 264, (Ca 2 1968); Local 453 Int'l. Union of Elec., Radio & Mach. Workers, AFL-CIO v. Otis Elevator Co., 201 F. Supp. 213 (D.C.N.Y. 1962), Hershey Creamery Co. v. Hershey Chocolate Corp., 269 F. Supp. 45 (D.C.N.Y. 1967).

The most important prerequisite that must be established to justify theissuance of an injunction is that irreparable harm will be suffered by the applicant if an injunction is not rendered. Allway Taxi, Inc. v. City of New York, 340 F. Supp. 1120 (D.C.N.Y. 1972).

From the foregoing, it is clear that the Hospital can suffer no injury whatever if its employees vote in the elections. The District Court's order should be vacated.

B. The Balance Of The Equities Favors Holding The Election.

The employees and the Union are prepared for the second time to go forward with the election as planned. If the election is enjoined, the resulting hardship to District 1199 clearly outweights the harm, if any, which the Hospital may suffer. In fact, as indicated above, the Hospital will only benefit from the election.

All equities are in favor of proceeding with the election forthwith.

On July 19, 1974, a consent election was agreed to by the Hospital and the Union. An election was scheduled for September 11, 1974. Throughout the month of August 1974, District 1199 actively campaigned in anticipation of the September 11 election. Yet on September 4, one week prior to the election, the Employer filed a motion to dismiss the proceedings before the State Board thus delaying the election pending a hearing on the motion to dismiss.

On October 9, 1974, a new election date of November 6, 1974, was agreed upon. Thus for the second time the employees were prepared to vote. Yet, on November 1, two business days before the election the Employer sought a preliminary injunction. The Employer's conduct in further delaying the resolution of this issue would seem to contradict its concern that "...personal relationships could be permanently strained if this election were held, the Union were certified by the State and the NLRB invalidated the results." (App. N at p. 11). Certainly, postponing two elections would do more harm toward creating strained and embittered relations among the employees and the Hospital staff, especially in light of District 1199's willingness to forego certification until the issue can be finally resolved.

The employees' right to select a bargaining agent can only be thwarted by continued delays. An organizing drive cannot last interminably and as the campaign is prolonged employees can be discouraged from believing the Union could or would effectively

represent them. Clearly the Employer will have the upperhand in this situation. Therefore, a balancing of the hardships favors holding the election forthwith. Dorfmann v. Boozer, 414 F. 2d 1168 (C.A.D.C. 1969); Arco Fuel Oil Co. v. Atlantic Richfield Co., 427 F. 2d 517 (C.A. 1970).

Professor Flemming James, who was then Chairman of the State Board and a former Professor of Law at Yale Law School in another hospital decision before the State Board, expressed this matter well:

> "It has been the consistent policy of the Board to conduct elections as speedily as possible because it has found in the course of its administration of the Act that delay prolongs the inevitable exposure of employees to all the subtle pressures which management - at all levels - can bring to bear on employees, singly and collectively, often in ways that are not susceptible of clear proof. And the Board has noted that unions generally want speedy elections and that steps which involve delays are generally sought by employers.
>
> "Of course employers must have enough time to exercise their rights of free speech and put before their employees the employer's side of the story but ample time for that is seldom in issue and does not appear to be here. Beyond that point, further delay plays into the hands of 'the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear.' See NLRB v. Gissell Packing Co., 395 U.S. 575, 617 (1969). This kind of danger is enhanced where the rivalry between an employer and a particular union is acute as appeared to be the case here and it cannot always be controlled even by conscientious top management or counsels."

Manchester Memorial Hospital Inc. and Local 1199, Conn. State Board of Labor Relations, Decision No. 981-B, 6/30/71.

In the instant case paragraph 15 of the Complaint is the only allegation of irreparable injury, but there has been no proof of injury to the Hospital. The two affidavits and the testimony of Mr. Hession talk only about the confused and troubled minds of the employees. If they are confused, it is because the State Board postponed the September 11 election at the behest of the Hospital which was trying to renege on its consent agreement. Another delay will cause only further confusion.

But this injunction is not being sought by the employees who would be less confused if they were allowed to vote November 6. It is sought by the Hospital. Where is the irreparable injury to it? The Hospital has already done its electioneering efforts. It has expended time, energy and money as has the Union. With the election only two days away, there will be no more additional outlay of money, energy, and time unless the election is not held.

To complete the election process now would benefit the Hospital and District 1199. The balance of equities is clearly in favor of District 1199.

II.

THE COURT BELOW ABUSED ITS DISCRETION IN ISSUING A PRELIMINARY INJUNCTION TO A PARTY HAVING "UNCLEAN HANDS"

Under the principals of equity and §8 of the Norris-LaGuardia Act, 29 U.S.C. §108, the District Court should not have issued an injunction to a party having unclean hands. See e.g. Clairol, Inc. v. Gillette Co., 270 F. Supp. 371 (S.D.N.Y. 1967), aff'd. 389 F. 2d 264.

The facts of the instant case make it clear that the Hospital's case is wholly lacking in equity. See Statement and Argument above. It entered into a consent election agreement knowing full well that on August 25, 1974, the NLPB would take jurisdiction over voluntary hospitals. Yet, the Hospital waited over five weeks after the amendment was enacted, ten days after the effective date, and only one week before the first election date to inform District 1199 that it was not going to honor the consent agreement. The election has already been delayed once as a result of the Hospital's refusal to honor its agreement. A second delay should not be granted to a party coming into Court with unclean hands. See, e.g. Hoh v. Pepsico, 491 F. 2d 556, 561, 562 (C.A. 2, 1974).

III.

THERE IS NO LIKELIHOOD THAT THE HOSPITAL WILL PREVAIL ON THE MERITS.

Finally the likelihood is that the Hospital will not prevail on the merits. This is still another reason for the denial of injunctive relief. See, e.g. Cutler Hammer, Inc. v. Universal Relay Corp., 285 F. Supp. 636 (D.C.N.Y. 1968).

The Court below ignores the long line of decisions which indicate that the NLRB will decline jurisdiction and dismiss the petition of an employer or union in deference to the validly conducted elections of a State Board regardless of whether or not the employer meets the NLRB jurisdictional amount criteria. See Cornel University, 183 NLRB No. 41, 74 LRRM 1269, 1275 (1970); We Transport, Inc., 198 NLRB No. 144, 81 LRRM 1010 (1972); Community Motors, 180 NLRB No. 119, 73 LRRM 1131; Western Meat Packers, Inc., 148 NLRB 444, 57 LRRM (1028); West Indian Co., Ltd., 125 NLRB 1203, 47 LRRM 1146; Lin-Mathieson Chemical Corp., 115 NLRB 1501, 38 LRRM 1099; T-H Products, 113 NLRB 1246, 36 LRRM 1471; King Brooks, Inc., 84 NLRB No. 74, 27 LRRM 1289; Bluefield Produce & Provision Co., 117 NLRB No. 215, 40 LRRM 1065; School-way Transportation Co., Inc., 43 LRRM 1428.

Similarly, the NLRB is free to decline jurisdiction in deference to the decision of State Boards or to consent election agreements. Advisory opinion of the NLRB, Yale-New Haven Hospital,

214 NLRB No. 34 (Oct. 16, 1974).

A State Board can maintain jursidiction over an action where it appears that the NLRB will decline jurisdiction. Roman Catholic Archdiocese of Newark, 83 LRRM 2934 (Superior Court, N.J. Appel. Div. 1973); Russell v. Electrical Workers Local 569, 409 P. 2d 926, 48 Cal. Rptr. 702 (1966); Vegas Franchieses, Limited v. Culinary Workers Union Local No. 226, 427 P. 2d 959, 83 Nev. 236 (1969); In Re York Corp., 17 LRRM 672 (Penn. Common Pleas, 1945); In re Shell Lake Boat Co., 120 LRRM 1328 (Wisc. Employment Rel. Bd. 1947).

The NLRB will not upset a consent agreement for an election even if before a State Board or other private agency such as the American Arbitration Association. See e.g. Sun Ship Employees Association, Inc. v. NLRB., 139 F.2d 744, 13 LRPM 710; (CA 3, 1943); Allis-Chalmers Mfg. Co., 17 NLRB 744, 39 LRRM 1317 (1957).

It is thus apparent that the NLRB will defer to the consent agreement of the parties under the auspices of the Connecticut State Board of Labor Relations.

Since even the NLRB's own decisions offer no support for the Hospital position, the likelihood is therefore, that the Hospital will not prevail on the merits. In fact, the State Board wrote to the N.L.R.B. requesting its advice. See Decision of the District Court, app. N 5. The N.L.R.B. gave the State Board an equivocal answer. Clearly, under such circumstances the State Board has jurisdiction to proceed. Yonkers Raceway v. New York State Labor Relations Board, 79 LRRM 3070 (D.N.Y. 1972).

IV.

THE COURT BELOW LACKED JURISDICTION UNDER THE NORRIS-LA GUARDIA ACT, 29 U.S.C. §101, et seq., THE ANTI-INJUNCTION STATUTE, 28 U.S.C. §2283, AND THE GARMON PREEMPTION DOCTRINE TO ISSUE A PRELIMINARY INJUNCTION AND ONLY THE NLRB CAN SEEK SUCH AN INJUNCTION.

Introduction

The Court below erroneously held that it had jurisdiction over this matter pursuant to 29 U.S.C. §§1332, 1337. For the reasons stated below, the Court was clearly in error.

A. The Norris LaGuardia Act

The Norris-LaGuardia Act, 29 U.S.C. §101 et seq. prohibits the federal courts from issuing injunctions in violation of the national labor policy enunciated in 29 U.S.C. §102. In the instant case, the Court below lacked jurisdiction to issue an injunction which interrered with the rights of self-organization and designation of a collective bargaining representative exercised by St. Francis' employees pursuant to the national labor policy and protected by the Norris-LaGuardia Act.

B. The Anti-Injunction Statute, 29 U.S.C. §2283

Section 2283 prohibits a federal court from issuing an injunction to stay a state court proceeding unless, inter alia where necessary in aid of its own jurisdiction. Although this section by its language refers to injunctions of state court

proceedings, the State Board is a quasi-judicial body whose proceedings should be accorded the same comity by federal courts as state court proceedings enjoy under §2283.

Even if the Hospital has shown that the State Board's proceedings would interfere with Federal rights protected by the National Labor Relations Act, this Court still may not ignore the limitations of §2283 and enjoin those proceedings. Atlantic Coast Line R. Co. v. Engineers, 398 U.S. 281. Although it is arguable that §2283 would not preclude injunctive relief if it were requested by the NLRB, it is clear that the court lacked jurisdiction to issue an injunction in favor of the Hospital, a private party. Amalgamated Clothing Workers of America v. Richman, 348 U.S. 511. See also Atlantic Coast Line R. Co., supra; N.L.R.B. v. Nash-Finch Co., 404 U.S. 138.

C. The Garmon Preemption Doctrine

The Court below erred in premising the issuance of the injunction upon its determination that the State Board's jurisdiction in this case has been preempted by the recent amendment to the National Labor Relations Act. Under San Diego Building Trades v. Garmon, 359 U.S. 236, both state and federal courts must defer to the primary jurisdiction of the NLRB to initially decide matters arising under the NLRA. Cf. Beacon Moving & Storage, Inc. v. Local 1814, IBT, 362 F. Supp. 442 (S.D.N.Y. 1972). Therefore, even if the State Board's jurisdiction

has been preempted by that of the NLRB, so also was the Court below without jurisdiction to act in a matter arguably within the jurisdiction of the NLRB.

D. Only The NLRB Can Invoke The Federal Court's Jurisdiction In This Matter.

In the instant case, the Hospital, a private party sought to invoke the jurisdiction of the Court below. Although the NLRB may have standing to invoke this Court's jurisdiction to enjoin the State Board's election, a private party does not have such standing. See Amalgamated Clothing Workers, supra; NLRB v. Nash-Finch, supra; Capital Service v. NLRE, 347 U.S. 301; Richman Brothers, supra. However, the NLRB is not the plaintiff in this case. The Court below identified the Board as a "nominal defendant." In fact, the NLRB did not even enter an appearance before the District Court at the hearing on the preliminary injunction. The fact that the NLRB submitted a memorandum supporting appellee's request for injunctive relief cannot obscure the fact that a private party and not the NLRB has sought injunctive relief in this Court. The NLRB can not delegate its authority to a private party.

The NLRB has chosen not to make an application for a preliminary injunction in this case. Unless and until it does make such an application, the District Court is without jurisdiction to issue an injunction.

CONCLUSION

For the above-stated reasons this Court should reverse the decision of the Court below and vacate the preliminary injunction.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of	:
the	:
Application of	: Court Decision No.624
THE SWEDISH HOSPITAL IN BROOKLYN,	: 37 SLRB No. 97
Petitioner,	: (Cases Nos. SE-47854, SE-47855, SE-47856,
-and-	: SE-47857, SE-47858, SE-48028)
NEW YORK STATE LABOR RELATIONS BOARD and LOCAL 1199, DRUG AND HOSPITAL UNION, AFL-CIO,	: * * * * * * *
Respondents.	: UNOFFICIAL TRANSCRIPT OF ORAL OPINION
	: September 4, 1974
	Civil No. 74-C 1267

Honorable Jack Weinstein, presiding

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The temporary restraining order issued by Judge Neaher is set aside. The hearing has been completed, and the basic order for the election issued prior to the effective date. The interpretation of the statute is not clear and the NLRB could well interpret the statute as not applying to this case. Even if the NLRB does not take that position, it can, as it has in the past, recognize a well-conducted and fair State Board election in further proceedings before it. The Federal Board may well cede jurisdiction in these transitional matters, be it in a blanket or partial form by negotiating with the SLRB. The NLRB might conclude that it would be highly desirable for federal and state authorities to cooperate in holding hearings and in arranging for elections and other activities, so that the energies and time expended in holding and directing elections are not wasted. I take judicial notice that NLRB procedures take a substantial amount of time. If the election does not go forth at this time, it may be months or years before the NLRB holds an election. It is open to the hospital at any time to commence a proceeding before the NLRB and the NLRB may step in and give more protection to the hospital, if necessary.

The union recognizes that any one of these elections is subject to further litigation whether in the state or federal administrative departments. There is a possibility of future litigation, so that any possible exacerbation of relations here does not seem a substantial factor.

There is not a substantial chance that the plaintiff will be able to succeed in the action and the equities balance in favor of the SLRB's position.

The parties are prepared to go forward tomorrow with an election and the employees of the hospital, as well as the hospital, will be upset if the election does not go forth.

If the union loses the election, the case will be mooted. The union may win in all of the units except for the security unit, in which case, the effect of winning a single unit for the entire hospital would be achieved in fact. I am not convinced that the proceeding in individual units in the hospital rather than in an over-all unit would be financially debilitating. Nor has anything been said that convinces me that a merger will be encouraged or discouraged if the election proceeds.

All equities seem to be in favor of proceeding. The temporary restraining order is lifted and the preliminary injunction is refused.